

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4870 of 1985

with

SPECIAL CIVIL APPLICATION No 4884 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KUMARI NIRMALA G. SALVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4870 of 1985
MR PV HATHI for Petitioner
MRS SIDDHI TALATI for Respondents No. 1, 2
2. Special Civil Application No 4884 of 1985
MR PV HATHI for Petitioner
MRS SIDDHI TALATI for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/97

ORAL JUDGEMENT

1. The facts and grounds of challenge in these special civil applications are identical, and as such, the same are being taken for hearing altogether and are being decided by this common order.

2. Both the petitioners were appointed as Staff Nurse under the Directorate of Health & Medical Services at Baroda on 22-11-1960. They applied on 10-11-1965 to the Director of E.S.I. Scheme for the post of Staff Nurse. The petitioners tendered their resignation as Staff Nurse from the office of the Director of Health & Medical Services at Baroda on 1-12-1965. Under the order dated 3-12-1965, the petitioners were appointed as Staff Nurse under E.S.I. Scheme and they joined the service on 4-12-1965. Under the order of the Director of Health & Medical Services dated 16-5-1966, the services of the petitioners were treated to be continuous. Then comes the next order of 27th October, 1967 of the Director of Health & Medical Services by which the petitioners were treated to be continuously in service and were granted extraordinary leave without pay and allowances for the period from 7-11-1965 to 3-12-1965. The appointment of the petitioners in the E.S.I. Scheme is ordered to be treated as on transfer from Medical Department and reference in this respect has been made to the order of the Director of Medical Services (E.S.I. Scheme) dated 4-5-1968. The Director of Medical Services (E.S.I.S), Ahmedabad vide its order dated 21st May, 1974 ordered that the benefits flowing from the past service in the Medical Services is not to be considered and the said period of service shall not be taken into consideration for seniority, pay and leave as the cadre of (Nurse) of both the Departments are separate and independent. It has further been mentioned in this order that the petitioners have joined the E.S.I.S. after tendering resignation from the Medical Services. However, this order has been passed but it was not given effect to. In the month of May, 1978 both the petitioners were promoted as Sister-in-charge. The Director of Medical Services (E.S.I.S.) vide its letter dated 15th February, 1984 wrote to the Chief Accounts Officer about giving effect to its earlier order dated 21st May, 1974 in case of the petitioners and the Chief Accounts Officer under its order dated 2nd March, 1984 ordered for re-fixing of the pay of the petitioners as per the order dated 21st May, 1974 and to recover the amount paid in excess to the petitioners on the erroneous pay fixation made earlier. Against this order both the petitioners approached to the Tribunal by filing separate appeals which came to be dismissed under the order dated 30th January, 1985.

Hence, these special civil applications.

3. These special civil applications were admitted by this Court on 9-1-1986 and interim relief in terms of Para No.11(F) has been granted. Para No.11(F) of the special civil applications read as under:

"to issue an injunction restraining the respondents from refixing the pay of the petitioner and from effecting any recovery pursuant to the orders Annex.E or any other order passed by the second respondent, his subordinates and agents, pending hearing and final disposal of this Petition;

4. So in view of the interim order of this Court aforesaid both the orders dated 15th February, 1984 of the Director, E.S.I.S. and that of the Chief Accounts Officer dated 2nd March, 1984 were not given effect to.

5. The respondents have not filed reply to these special civil applications, and as such, the averments made therein stand uncontroverted.

6. Heard the learned counsel for the parties.

7. The counsel for the petitioners contended that at one point of time i.e. in the year 1965 both the Health & Medical Services and Medical Services (E.S.I.S.) were one and the same department and not two separate departments. Bifurcation has taken place much after that year. So it was a case of only transfer of the petitioners though after appointment. It is true that the petitioners tendered resignation but to the best of their knowledge those resignations had not been accepted. It has next been contended that the order dated 21st May, 1974 has not been given effect to and it was ever not made known to the petitioners for about more than ten years. The order of Chief Accounts Officer dated 2nd May, 1984 was abruptly passed. It has next been contended that both the orders dated 21st May, 1974 and 2nd May, 1984 have been made in violation of principles of natural justice. It has lastly been contended that the Tribunal has fell in error in rejecting the appeals both on technical ground as well as on merits.

8. On the other hand, the counsel for the respondents supported the orders aforesaid.

9. On question put to the counsel for the respondents by the Court she very fairly conceded that

the total amount of recovery against both the petitioners may not be exceeding an amount of Rs.5000/-. She further admits that both the petitioners have already retired from the services.

10. Under the orders dated 16-5-1966, 27-10-1967 and 4-5-1968 the services of the petitioners were treated to be continuous and accordingly all the benefits have been given to them. These orders have been passed by the Director of Health & Medical Services. The Director of E.S.I.S. is also of equal status of the Director of Health & Medical Services and before passing the order dated 21st May, 1974 he has not considered the previous order passed by the Director of Health & Medical Services. Be that as it may. The fact is that the petitioners are not at fault. They have been given the benefits of continuous service till 21st May, 1974 by treating their service to be continuous and even after passing of the order dated 21st May, 1974 for about ten years this order was not given effect to. So for all these years after 21st May, 1974 the department itself has paid the salary to the petitioners taking their services to be continuous and if there is any fault then it lies with the department and not with the petitioners. It is not a case where the petitioners have snatched away something from the pocket of the respondents. Since 3rd December, 1965 they have been given the pay by treating their services to be continuous from 1960 and they have taken all these benefits bonafidely. Even if it is taken to be a case of mistake then too it could have been corrected but how far the action of the respondents to order for recovery of the excess amount which has been paid to the petitioners is said to be justified. This aspect of the matter has not been considered by the Tribunal.

11. In the result, both these special civil applications succeed and the same are allowed. The order of the respondent No.2 dated 15th February, 1984 and 2nd March, 1984 are quashed and set aside to the extent where they relate to the recovery part. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-